

## **DRAFT**

# **SPECIAL MEETING OF THE CREDENTIALING REVIEW COMMITTEE OF THE STATE BOARD OF HEALTH TO ADVISE THE FULL BOARD ON THE SURGICAL TECHNOLOGIST'S PROPOSAL (January 14, 2016)**

**COMMITTEE MEMBERS PRESENT:** Debra Parsow (Chair); Anthony Moravec, DVM; Jim Trebbien; Joshua Vest, DPM; Shane Fleming, RN; Travis Teetor, MD (Vice Chair); Diane Jackson, APRN; Douglas Vander Broek, DC

**STAFF MEMBERS PRESENT:** Matt Gelvin; Ron Briel; Marla Scheer

## **Comments by Douglas Vander Broek, DC, Chairperson of the Surgical Technologists' Technical Review Committee**

Dr. Vander Broek stated that his committee did an excellent job of identifying the key issues of the review. Discussions brought in a wide variety of insights and ideas. Interaction between the committee members and the wide variety of interested parties in attendance was always free-flowing and constructive.

Ms Parsow asked about the proposed grandfather clause and how that would work if passed. She also wanted to know how discipline would work under the terms of the proposal and whether or not self-reporting would occur as it does in other licensed professions. She also commented on the absence of solid data to support applicant contentions about the need for the proposal. Ms. Parsow also commented on the absence of data supporting opponent contentions regarding the high cost of the proposal.

## **Comments by supporters of the proposal:**

### **Comments by Casey Glassburner, CST, on behalf of the Academy of Nebraska Surgical Technologists**

Ms. Glassburner began her remarks by stating the field of surgical technology has become very complex and demands a well educated and well trained work force to provide the services in question safely and effectively. Ms. Glassburner went on to state that only licensure can provide the assurance that all surgical technology workers are adequately educated and trained. She went on to state that there is no reason to believe that salaries for surgical technologists would increase as a result of licensure. She stated that studies have shown that infection rates have declined in surgical facilities wherein formal education and training has been required for surgical technologists. She commented that concerns about a shortfall in the pool of available graduates will soon be addressed by the soon to be opening of a third school of surgical technology at Western Community College.

Ms. Glassburner then commented on applicant group concerns about the Howard Paul case and how it could be used against surgical technologists just as it was recently used against surgical first assistants, the concern being that like surgical first assistants surgical technologists are unlicensed and according to this ruling cannot work under physician delegation. She went on to state that only licensure for her profession can provide the assurance that this ruling cannot be used against surgical technologists.

Ms. Glassburner commented that the consumer has no way of knowing what the qualifications of surgical technology workers are under the current practice situation. She went on to state that mandatory certification and examination is an option used in some other states but not here in Nebraska, and that is because of Howard Paul. Only licensure can address this concern.

Dr. Moravec asked Ms. Glassburner to elaborate on her claim that surgical technology has become very complex in recent years. Ms. Glassburner responded that the advent of robotics in the surgical suite has significantly raised the bar when it comes to necessary technical know-how on the part of surgical workers. Dr. Moravec responded that for most of the items listed on the applicants' scope of practice in their proposal 'OJT' provided in a hospital setting should suffice. He then asked her if her group would be going through credentialing review if not for Howard Paul. Ms. Glassburner responded in the affirmative because education and training standards would still be an issue even without Howard Paul. She added that technical complexities in the modern surgical suite necessitate the end of the 'OJT'-trained surgical technology category. Dr. Teetor then asked her why her proposal included a grandfathering provision for all current surgical technologists including those with only 'OJT' training if the latter are so much of a safety concern. Ms. Glassburner replied by stating that most of those grandfathered have some formal education and training and that the 'OJT' group is a small subset of these workers.

### **Comments by Dr. Todd Orchard, M.D.**

Dr. Orchard began his remarks by stating that public safety is a more important concern as regards these issues than are concerns about the cost of a credentialing process. We need to consider what the costs would be if people died as a result of bad care stemming from failure to maintain a sterile field in the surgical suite. He went on to state that there is no factual basis for the argument that wages for surgical technologists would rise if the proposal were to pass.

Dr. Teetor asked Dr. Orchard about the possible increased costs associated with the proposed new education and training requirements. Dr. Orchard responded by stating that there are on line courses that are very affordable. These courses already exist and their costs are largely covered by the educational institution that offers them.

Dr. Teetor then commented that it isn't practical to license every person involved in the maintenance of the sterile field in a surgical suite, and that we should focus on credentialing only those who are in direct contact with patients. Dr. Orchard responded that if that were the case we wouldn't even credential radiologists or anesthesiologists because as a matter of fact they do not come into direct contact with the patient.

Dr. Orchard went on to state that when I'm in the surgical suite I need well-trained people around me, and that there is no way I can keep an eye on every action of every surgical worker around me during surgery. I need to be able to trust each and every person I work with therein because, according to the 'Captain-of-the-ship' ruling, I am legally liable for each and every one of them. He went on to state that the risk of errors or harm is much greater for 'OJT' trained surgical technologists than it is for those who are formally trained.

Mr. Fleming then asked Dr. Orchard how our educational system for surgical technologists is going to keep up with the demand for well educated and trained workers if the proposal were to pass. Mr. Fleming added that 'OJT'- trained surgical workers help to maintain a balance between supply and demand. Casey Glassburner responded that a new school of surgical technology will open very soon and will greatly assist in this regard.

Casey Glassburner then provided information on the costs of achieving a degree in surgical technology. She stated that the cost is about 9700 dollars at Southeast Community College for a degree program completed in about two years. She commented that this is a very affordable education. She went on to state that in the near future satellite programs will be opening up around the state.

## **Comments by opponents of the proposal:**

### **Jay Slagle on behalf of the Midwest Eye Surgery Center and the Nebraska Association of Independent Ambulatory Centers**

Mr. Slagle began his remarks by stating that the organizations he represents are opposed to the proposal to license surgical technologists. Mr. Slagle went on to state that the applicants have not provided evidence to indicate that un-credentialed surgical technologists are a source of harm to the public or that they increase risk of harm to patients. The data that they cited from a report by the Institute of Medicine on preventable deaths in hospitals fails to establish a link between surgical technologists, on the one hand, and data pertinent to common preventable deaths, on the other. Additionally, the applicants provided anecdotal stories about rogue surgical technologists who have harmed patients. Such stories do not provide the basis for an effective argument in support of licensing all surgical technologists.

Mr. Slagle continued his remarks by stating that the proposal would significantly diminish the supply of qualified practitioners because it would create a huge barrier to entry into the profession, particularly for low income persons. The costs of a formal educational and training program range from 9700 to 11,200 dollars at Southeast Community College for fees and tuition and 35,000 dollars for the same costs in Nebraska Methodist programs, for example. These costs do not include economic losses associated with having to attend school instead of working to support one's family. Licensure would reduce the labor supply and increase wages. This would impact rural hospitals and small surgical centers the most.

Mr. Slagle went on to state that the applicants have demonstrated no need for their proposal. Not one incident was presented for consideration. The proposal raises questions about where regulators should draw the line when it comes to licensing surgical suite workers. Should we license hospital janitors, hospital handymen, and hospital supply personnel? These workers also play a role in maintaining a sterile field, for example.

Mr. Slagle went on to state that there are better ways of addressing the concerns raised in the proposal, one of which is the idea of a registry of surgical technologists in Nebraska.

Ms. Parsow asked Mr. Slagle to elaborate on the additional costs that the proposal would supposedly create. Mr. Slagle responded that the proposal would result in fewer people seeking employment as surgical technologists, and that this reduced pool of available people to fill vacant positions would in turn result in ever greater competition for those still willing to work as surgical technologists with the larger, urban facilities winning out over smaller rural facilities.

When asked about the potential of the Howard Paul case to adversely impact surgical technologists Mr. Slagle responded that the only reason Howard Paul is an issue at all is that some surgical suite employees were doing things vis-à-vis suturing that they should not have been doing. The only way Howard Paul could impact surgical technologists would be if they were engaged in doing suturing or some other kind of tissue manipulation which is beyond their role or training.

Dr. Moravec asked Mr. Slagle how 'OJT' training occurs in the facilities he represents. Mr. Slagle responded that there is an extensive checklist of performance-based items for which a candidate for employment as a surgical technologist would have to learn and demonstrate competency.

### **Elisabeth Hurst, JD, on behalf of the Nebraska Hospital Association**

Ms. Hurst stated that the applicants provided no evidence or data to support their contention that the current practice situation of surgical technologists is a source of harm or danger to the public health or welfare.

Ms. Hurst added that the proposal would create significant economic hardship for surgical facilities in Nebraska as well as limit the pool of available employees for surgical technology jobs in such facilities. She went on to state that it would be the smaller surgical centers and those in rural areas that would be impacted the most.

Ms. Hurst stated that the public has every reason to trust Nebraska surgical facilities to provide assurance that those who work to maintain a sterile field in the surgical suite are capable of doing their jobs safely and effectively.

Ms. Hurst stated that one option that would work to address concerns about current surgical technology practice would be some type of registry perhaps along the lines of the current medication aide registry, for example.

Dr. Moravec asked Ms. Hurst to elaborate on the high costs that would supposedly stem from the proposal. Ms. Hurst commented that nineteen rural hospitals are currently already 'in the red', and if the proposal were to pass their financial situation would be significantly worsened.

**Melissa Florell, RN, on behalf of the Nebraska Nurses Association**

This testifier stated that her organization opposes licensure for surgical technologists but would be willing to support the idea of a registry for these professionals. A registry could be used to define a competency standard for them. She added that licensure is not appropriate for them because their work consists of a range of functions rather than elements of a true scope of practice.

**Gina Ragland on behalf of the Nebraska Medical Association**

This testifier stated that NMA would support the idea of a registry for surgical technology but not licensure.

**Karen Rustermier, RN, on behalf of Perioperative Nurses**

This testifier stated that it is difficult to fill surgical technology job vacancies now without the proposal. If the proposal were to pass this situation can only get worse. She went on to state that many surgical technologists are very mobile and that if formal education and training requirements are passed in Nebraska many of these workers will leave our state for states that do not have such requirements.

## **Formulation of Recommendations by the Board members**

**Action taken on each of the four criteria:** Actions were taken regarding whether or not the applicants' proposal satisfied the four criteria. A 'yes' vote indicated that the applicants' proposal satisfies a given criterion. A 'no' vote indicated that it does not.

**Criterion one:** **Unregulated practice can clearly harm or danger the health, safety, or welfare of the public.**

### **Action taken:**

Voting yes on this criterion were Parsow, Vest, and Vander Broek. Voting no on this criterion were Teetor, Fleming, Moravec, Trebbien, and Jackson.

**Criterion two:** **Regulation of the profession does not impose significant new economic hardship, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.**

### **Action taken:**

Voting no on this criterion were Parsow, Teetor, Fleming, Moravec, Trebbien, Vander Broek, Vest, and Jackson. There were no yes votes.

**Criterion three:** **The public needs assurance from the state of initial and continuing professional ability**

### **Action taken:**

Voting yes on this criterion were Parsow, Teetor, Fleming, Moravec, Trebbien, Vander Broek, Vest, and Jackson. There weren't any no votes.

**Criterion four:** **The public cannot be protected by a more effective alternative.**

### **Action taken:**

Voting yes on this criterion was Parsow. Voting no on this criterion were Teetor, Fleming, Moravec, Trebbien, Vander Broek, Vest, and Jackson.

### **Action taken on the entire proposal**

The Board Credentialing Review Committee Members took action to advise the full Board of Health on whether or not to recommend approval of the surgical technology proposal via an 'up-down' vote.

Voting to approve the proposal was Parsow. Voting not to approve the proposal were Teetor, Fleming, Moravec, Trebbien, Vander Broek, Vest, and Jackson. By this vote the members of the Board's Credentialing Review Committee recommended against approval of the surgical technology proposal.